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MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-907

OSCAR YEAGER and ANNA C. YEAGER,

Petitioners,

v.

TOWNSHIP OF MANSFIELD, WARREN COUNTY, NEW JERSEY, a municipal corporation, TOWNSHIP COMMITTEE OF MANSFIELD, and the BOARD OF ADJUSTMENT of the TOWNSHIP OF MANSFIELD,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE ~~SUPREME~~ Superior COURT OF NEW JERSEY, Appellate Div.

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IN THE

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No.

OSCAR YEAGER and ANNA C. YEAGER,

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v.

TOWNSHIP OF MANSFIELD, WARREN COUNTY, NEW JERSEY, a municipal corporation, TOWNSHIP COMMITTEE OF MANSFIELD, and the BOARD OF ADJUSTMENT of the TOWNSHIP OF MANSFIELD,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

The petitioners, Oscar Yeager and Anna C. Yeager, respectfully pray that a Writ of Certiorari issue to review the decision of the Supreme Court of New Jersey, entered in this proceeding on September 21, 1972.

Opinions Below

The decision of the Supreme Court of New Jersey, unreported, appears in the Appendix hereto (App. A p. 1a). The judgment and opinion of the Superior Court of New Jersey, Appellate Division, unreported, appears in the Appendix hereto (App. B p. 2a). The unreported trial court judgment and opinion rendered by the Superior Court, Law Division, Warren County, New Jersey also appears in the Appendix hereto (App. C p. 5a).

Jurisdiction

The judgment of the Superior Court of New Jersey, Appellate Division was entered June 22, 1972. A timely petition for certification to review the Appellate Court judgment was filed with the Supreme Court of New Jersey, which petition was denied on September 21, 1972, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C.A. 1257(3).

Questions Presented

1. Whether a zoning ordinance which totally prohibits mobile home parks from a municipality violates the supremacy Clause, U.S.C.A. Const. Art. 6 cl. 2, by frustrating the purpose of federal legislation which authorizes loan guaranty benefits and mortgage insurance for purchase of mobile homes.

2. Whether a zoning ordinance which totally prohibits mobile home parks from a municipality violates the constitutional safe guards announced in U.S.C.A. Const. Amend. 14, Sec. 1 which protect against deprivation of property without due process of law, and guaranty equal protection under the laws.

Constitutional and Statutory Provisions Involved

The relevant constitutional and statutory provisions involved are set forth in the Appendix hereto, (App. D pp. 19a to 21a).

Statement of the Case

Petitioners are owners of approximately 128 acres of property, a small portion of which, measuring 1200 feet by approximately 400 feet, was originally projected for use as a mobile home park. The property is situate in the northwestern portion of New Jersey, in the Township of Mansfield, Warren County. The characteristics of the subject property and surrounding area may be succinctly described as rural, generally undeveloped, sparsely settled, and dominated by mountains and woods.

A review of three separate years provides a capsule history of events leading to this proceeding:

(1) 1960—Petitioners obtained a license from the municipality to operate a mobile home park on their property, and commenced construction and development of said park;

(2) 1964—Municipality passed its initial zoning ordinance whereby mobile home parks were totally precluded from the Township;

(3) 1969—Board of Adjustment denied petitioners' application to continue construction of their existing mobile home park as a valid prior non conforming use, and denied petitioners' application for a variance.

Following the denial of their application by the Board of Adjustment, petitioners instituted suit in the Superior

Court of New Jersey, Law Division, challenging both the action of the board and the constitutional validity of that portion of the zoning ordinance which totally prohibits mobile home parks. The evidence presented to the board as well as the proofs offered at trial clearly indicate that there is a substantial need for mobile home park facilities not only in Mansfield Township but throughout the state and country as well.

"How Federal Question is Presented"

a) To trial court:

By pleadings, petitioners alleged that the total prohibition of mobile home parks constitutes a deprivation of property without due process of law and a denial of equal protection under the law. At trial, petitioners challenged the constitutionality of the prohibitory ordinance as violative of federal public policy favoring mobile homes and mobile home parks, evidenced by federal legislation authorizing VA and FHA guaranty of loans for the purchase of mobile homes.

The trial court rejected petitioners' argument, holding that:

> "The Supreme Court in New Jersey in the case of *Vickers* v. *Twp. Committee of Gloucester Twp.*, 37 N.J. 232 (1962) [181 A. 2d 129] held that a zoning ordinance precluding trailer camps and trailer parks was valid."
>
> • • •
>
> "The plaintiffs make a strong argument for not following *Vickers, supra,* however, that question is not for this Court but for the Legislature." (App. p. 17a)

b) To appellate division:

Petitioners again challenged the constitutionality of the prohibitory ordinance by brief and oral argument to the Superior Court, Appellate Division.

In affirming the judgment under review, the Appellate Division observed that:

> "We are constrained to reach that conclusion in light of the findings of fact by the trial court, our decisional law adverse to expansions of non conforming uses, and the policy of our State as expressed in *Vickers* v. *Twp. Com. of Gloucester Twp.*, 37 N. J. 232 (1962), appeal dismissed and *cert.* den. 371 U. S. 233 (1963), reversing the decision of this court in that case reported at 68 N. J. Super. 263 (App. Div. 1961)" (App. B, p. 3a)

Timely petition was filed with the Supreme Court of New Jersey seeking certification to review the decision of the Appellate Division which, among other things erroneously applied the *Vickers, supra* decision on a per se basis to validate exclusionary zoning. Petitioners also sought reassessment, restriction and, to the extent necessary, an overruling of the *Vickers* decision. The New Jersey Supreme Court declined to exercise its discretionary power, however, and denied the petition for certification. (App. A p. 1a).

REASONS FOR GRANTING THE WRIT

1. The decision below establishes law in the State of New Jersey which undermines and frustrates federal legislation, thus presenting a significant question under the Supremacy Clause, U.S.C.A. Const. Art. 6, cl. 2 mandating review by this Court.

Mobile home living has become an accepted and vitally necessary alternative in meeting the housing crisis which grips this nation. Clear expression of federal public policy which supports this housing alternative is demonstrated by Congressional enactment of the "Veterans' Housing Act of 1970; as amended, 84 Stat. 1108, 38 U.S.C.A. 1819 (App. D p. 20a) whereby the Administrator may guaranty loans to veterans for the purchase of mobile homes; and by Congressional enactment of the "Housing and Urban Development Act of 1969", as amended, 83 Stat. 379, 12 U.S.C.A. sec. 1703, (App. D p. 20a), whereby the Secretary of Housing and Urban Development is empowered to insure mortgages for the purchase of mobile homes.

In the instant case, the Supreme Court of New Jersey, by its decision not to grant certification (App. A p. 1a) has upheld the decision of the Superior Court, Appellate Division, (App. pp. 2a to 4a) wherein a zoning ordinance which totally excludes mobile home parks from an admittedly rural and largely undeveloped municipality was found to be constitutionally valid. In their written opinion (App. B p. 4a) the Appellate Division made the significant observation that the policy in our State with respect to the total prohibition of mobile home parks from a municipality is expressed in *Vickers* v. *Tp. Com. of Gloucester Tp.*, 37 N. J. 232 (1962), appeal dismissed and *cert.* den. 371 U. S. 233 (1963). In *Vickers*, our Supreme

Court, approximately ten years ago, also upheld the constitutional validity of a zoning ordinance totally prohibiting mobile home parks. Times have changed and the *Vickers* dissent by Justice Hall seems even more appropriate now than when it was written.

The direct holding of the decision under review is that mobile home parks may be totally excluded from Mansfield Township. The more significant impact of the subject decision, however, taken in context with *Vickers, supra,* is that any and all municipalities in the State of New Jersey may exclude mobile home parks from their boundaries under the guise of reasonable zoning regulation. Absent mobile home parks, (i.e. sites on which to locate the mobile homes) the aforementioned Congressional enactments, designed to assist in the purchase of mobile homes, are virtually meaningless in both Mansfield Township and New Jersey.

Clearly, therefore, the current status of the law in the State of New Jersey frustrates the federal legislation pertaining to mobile homes, and severely impairs the efficiency of the federal government agencies as they attempt to perform their duties with respect to this legislation.

Every state is bound by the Constitution and Laws of the United States, and a state law which frustrates the purpose of national legislation will be invalidated under the Supremacy Clause of the Constitution (App. D p. 19a). *Perez* v. *Campbell,* 402 U. S. 637 (1971); *Nash* v. *Florida Industrial Commission,* 389 U. S. 235 (1967).

2. The decision below, by sanctioning the total prohibition of mobile home parks from a municipality, raises grave questions concerning infringement upon Constitutionally protected rights announced by the 14th Amendment.

a) The decision under review, erroneously it is contended, upholds the constitutional validity of an ordinance which totally prohibits the legitimate business use of mobile home parks under the guise of zoning regulation. Petitioners contend and have contended throughout these proceedings that regulation does not mean or permit prohibition; and that prohibition is an unreasonable and unconstitutionally excessive exercise of police power. Where an ordinance clearly intrudes upon rights (e.g. property rights) protected by the fundamental law without bearing a substantial relation to health, safety, or the general welfare, it must be declared unconstitutional *Village of Euclid, Ohio* v. *Ambler Realty Co.*, 272 U. S. 365 (1926); *Robertson* v. *City of Salem*, 191 F. Supp. 604 (D. C. Oregon 1961).

Petitioners are directly affected by this excessive exercise of police power, being precluded from completing their mobile home park as originally projected, and being deprived thereby, of the appropriate, reasonable and economic use of their property without due process of law.

Even more significant than the unconscionable and unconstitutional treatment visited upon petitioners by this prohibitory ordinance, however, is the impact of this decision on everyone, including purchasers, connected with the mobile home industry. The decision stands as precedent for municipalities throughout New Jersey, as well as any other state which chooses to adopt the New Jersey rule, to preclude mobile home parks from their boundaries. Needless to say, this decision also has a very chilling

effect upon future development of mobile homes and mobile home park facilities in New Jersey and elsewhere.

The total prohibition of a legitimate use, as opposed to its regulation, must bear a very strong and genuine relationship to the enhancement of the general welfare of the community. See *Kirsch Holding Co.* v. *Borough of Manasquan,* 59 N. J. 241 (1971) 281 A. 2d 513 for recent New Jersey expression of this principle. Petitioners recognize that the burden of proof is on the party attacking a zoning ordinance. Once it is shown, however, that a business use is legitimate and is in conformity with all other zoning and building code requirements, the onus is then placed upon the municipality to explain the benefit to the general welfare or other legitimate zoning criteria sought to be achieved by the total prohibition of that business use. *Exton Quarries, Inc.* v. *Zoning Board of Adjustment,* 228 A. 2d 169 (Pa. 1967); *Beaver Gasoline Co.* v. *Zoning Hearing Board of Borough of Osborne,* 275 A. 2d 702 (Pa. 1971); 57 *Cornell Law Review* 461 (1972).

In the instant case, petitioners contend that there has been no showing of reasonable nexus between any valid zoning objective and the total prohibition of mobile home parks from the rural municipality of Mansfield Township. Failure by the New Jersey Supreme Court to overturn the subject ordinance and protect petitioners' constitutional property rights is therefore plain error raising serious questions of substantive due process which demand review by this Court.

b) The failure of the New Jersey Supreme Court to review and overturn the prohibitory ordinance challenged herein denies petitioners equal protection under the laws.

In the recent case of *DeSimone* v. *Greater Englewood Housing Corp. No. 1,* 56 N. J. 428, 267 A. 2d 31 (1970),

the Supreme Court of New Jersey upheld a variance permitting the construction of low cost housing projects. Petitioners' mobile home park facility also affords low cost housing accomodations. The failure, therefore, to provide petitioners with comparable zoning treatment for their offer of comparable services at a comparable price denies them equal protection under the laws to engage in the same or similar legitimate business use of their property and to utilize their property for its appropriate, reasonable and economic purpose.

This denial of equal protection under the laws, emanating from the decision under review, extends beyond fundamentally protected property rights, however, and severely infringes upon another fundamental right—that being the right to decent shelter.

The "Veterans' Housing Act of 1970", as amended, 84 Stat. 1108, 38 U.S.C.A. 1819; and the "Housing and Urban Development Act of 1969" as amended, 83 Stat. 379, 12 U.S.C.A. sec. 1703, hereinabove discussed, clearly demonstrates that access to decent housing for every American family is a priority goal of the federal government. The right to that decent housing thus rises to the status of a fundamentally protected right under the Constitution.

Exclusionary zoning substantially impairs that fundamental right to decent housing without serving any compelling state interest.

New Jersey courts have recognized that zoning ordinances containing excessive and unreasonable restrictions designed to discourage or exclude the development of certain types of housing accommodations can no longer be tolerated. *Oakwood at Madison, Inc.* v. *Tp. of Madison,* 117 N. J. Super. 11 (Law Div. 1971), 283 A. 2d 353; *Southern Burl. Cty. N.A.A.C.P.* v. *Tp. Mt. Laurel,* 119

N. J. Super. 164 (Law Div. 1972), 290 A. 2d 465; and *J. D. Const.* v. *Bd. of Adjust. Tp. Freehold,* 119 N. J. Super. 140 (Law Div. 1972), 290 A. 2d 461.

What makes the exclusionary ordinance hereunder review even more intollerable is that it deprives persons with low, moderate, and fixed incomes from obtaining decent shelter so sorely needed. The demand for the type housing facility offered by petitioners is unrefuted on the record, and if allowed to develop as originally projected, their facility will help respond to the public need for decent housing.

The zoning exclusion of this type facility unjustly deprives a portion of the public from their choice of housing. Veterans and F.H.A. applicants, for example, who seek federal assistance to purchase mobile homes are prevented from living in Mansfield Township because no site on which to place their home is available; whereas their counterparts who seek federal assistance to purchase a conventional home find no such impediment to their residence in the Township. This blatant denial of equal protection has direct and significant consequences to petitioners, including a discriminatory and unjust deprivation to them of any benefits which they might otherwise realize from the federal mobile home programs previously discussed.

The approval by our highest court of this exclusionary ordinance, fraught with constitutional infirmities as indicated herein, raises serious questions concerning fundamentally protected rights which justify the grant of certiorari to review the judgment below.

c) As noted above, the decision under review is clearly predicated upon the holding in *Vickers* v. *Township Committee of Gloucester Township,* 37 N. J. 232 (1962). What

must not be overlooked, however, is the extensive dissenting opinion, written by Mr. Justice Hall, particular reference being directed to his comments at page 268:

> "In the face of these facts, it is arbitrary to permit the prohibition of mobile home parks completely in a municipality where they can be placed in appropriate districts and in which there is a need or demand for them. To hold otherwise would be to allow any method of housing to be outlawed by local whim. I cannot understand how, in a large and roomy township, a properly situated and regulated mobile home park can have a detrimental effect on the value of all the property in the township or on its overall attractiveness any more than industrial and commercial districts or even small lot housing developments. (5)"

The persuasiveness of his logic is compelling, and the applicability of his conclusion to the subject case is unmistakable. The dissent of yesterday must be the decision of today if there is to be hope in the housing field for tomorrow.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the decision of the Supreme Court of New Jersey declining review of the judgment and opinion of the New Jersey Superior Court, Appellate Division.

Respectfully submitted,

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Counsel for Petitioners

December 20, 1972

APPENDIX A

Order of the Supreme Court of New Jersey Denying Certification

SUPREME COURT OF NEW JERSEY
C-29 September Term 1972

OSCAR YEAGER and ANNA C. YEAGER,

Plaintiffs-Petitioners,

vs.

TOWNSHIP OF MANSFIELD, *et als.*,

Defendants-Respondents.

To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon Ordered that the petition for certification is denied, with costs.

WITNESS the Honorable Joseph Weintraub, Chief Justice, at Trenton on the 21st day of September, 1972.

FLORENCE R. PESKOE
Acting Clerk of the Supreme Court

FILED

September 21, 1972
FLORENCE R. PESKOE
Acting Clerk

APPENDIX B

Per Curiam Opinion of the Supreme Court of New Jersey, Appellate Division

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION A-2463-70

OSCAR YEAGER and ANNA C. YEAGER,

Plaintiffs-Appellants,

v.

TOWNSHIP OF MANSFIELD, WARREN COUNTY, NEW JERSEY, a Municipal Corporation, THE TOWNSHIP COMMITTEE OF MANSFIELD, and THE BOARD OF ADJUSTMENT OF THE TOWNSHIP OF MANSFIELD,

Defendants-Respondents.

Argued June 6, 1972—Decided June 22, 1972.

Before Judges LEWIS, HALPERN and LORA.

Mr. Vincent J. Apruzzese argued the cause for appellants (*Messr. Apruzzese & McDermott,* attorneys; *Mr. Frederick T. Danser, III,* on the brief).

Mr. Harry K. Seybolt argued the cause for respondents (*Mr. Martin Bry-Nildsen, Jr.,* attorney for respondents Township of Mansfield and Township Committee of Mansfield; *Mr. Seybolt,* attorney for respondent

Appendix B

Board of Adjustment of the Township of Mansfield; *Messr. Bry-Nildsen* and *Seybolt* on the brief).

PER CURIAM

When in 1964 defendant Township of Mansfield adopted its first zoning ordinance which did not permit permanent trailers anywhere in the township, the small mobile home park, then consisting of 14 trailers, that plaintiffs had been operating since 1961 assumed a status of a nonconforming use. In 1969 they sought a permit to construct trailer spaces, in addition to the permit issued in 1961 for 28 trailer spaces, to be constructed in an area they had designated "expansion area" on the original plot plan filed with the township. The zoning officer denied the application for an additional permit, and plaintiffs unsuccessfully appealed to the board of adjustment. An action in lieu of prerogative writs then ensued.

Plaintiffs here appeal from a judgment of the Law Division (a) affirming a decision by the board of adjustment that plaintiffs were not entitled to construct, as a valid nonconforming use, additional trailer court spaces in the proposed "expansion area" of their property; (b) sustaining the findings of the board that no special reasons exist to support the granting of a requested use variance, and that the granting thereof would substantially impair the intent and purpose of the local zoning plan; and (c) failing to declare unconstitutional the exclusionary provisions in the township zoning ordinance.

We have studied the record and affirm the judgment under review substantially for the reasons set forth in the opinion of Judge Collins for the Law Division. We are constrained to reach that conclusion in light of the

findings of fact by the trial court, our decisional law adverse to expansions of nonconforming uses, and the policy of our State as expressed in *Vicker* v. *Tp. Com. of Gloucester Tp.*, 37 N. J. 232 (1962), appeal dismissed and *cert.* den. 371 U. S. 233 (1963), reversing the decision of this court in that case reported at 68 N. J. Super. 263 (App. Div. 1961). For a full discussion of the problem see Annotation, "Validity and Application of Zoning Regulations Relating to Mobile Home or Trailer Parks," 42 A.L.R. 3d 598 (1972).

APPENDIX C

Letter Opinion of the Morris County Court

MORRIS COUNTY COURT

Chambers of
JOHN D. COLLINS
Judge

COURT HOUSE
MORRISTOWN, NEW JERSEY

Filed April 30, 1971

"NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

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Appendix C

Re: Oscar Yeager and Anna C. Yeager v. Township of Mansfield, Warren County, New Jersey a Municipal Corporation, The Township Committee of Mansfield, and The Board of Adjustment of the Township of Mansfield. Superior Court of New Jersey, Law Division, Warren County, Docket No. L-33837-69 P.W.

Gentlemen:

This is an action in lieu of prerogative writ appealing the denial of a variance by the Board of Adjustment of Mansfield Township, (Board), and its denial to allow plaintiffs to use their land for mobile homes as a prior nonconforming use.

Since prior to 1960 Oscar and Anna Yeager, (Plaintiffs), were and now are owners of subject property in the Township containing approximately 128 acres designated as Tax Map Lot 4, in Block 402.

In 1960, at which time no zoning ordinance was in effect, plaintiffs applied for and received a license for a trailer court known as "Happy Hill Trailer Court". Also at that time, plaintiffs indicated that a map would be submitted to the Townwship designating the portion of their property to be used for trailer court purposes. Subsequently, this map was filed designating 1200′ frontage on Oxford Road and a depth of 400′ to be used as a trailer court. The designated trailer court area specified use for 28 trailers, and the remaining portion thereof was designated for additional trailers as business warranted.

The plan submitted for the 28 trailer sites contained details of proposed facilities and indicated the additional area fronting on Oxford Road as "expansion area". No

details for water, sewer, roads or the like were contained in this particular section of the map.

The Township of Mansfield, (Township), adopted for the first time on December 15, 1964 a zoning ordinance classifying subject premises in an A-Agricultural district. Trailer courts are not a permitted use therein, nor in any other district in the Township.

Plaintiffs submitted a plot plan entitled "Happy Hill Mobile Park", Mansfield Township, Warren County, New Jersey, March 1969, Robert C. Evertz, Licensed Land Surveyor. This plot plan presented a more detailed plan of the area which had been designated "expansion area" on the 1961 map, said plan by surveyor Evertz proposed to provide additional 42 to 69 trailer spaces in accordance with said 1969 plot plan.

In 1969 plaintiffs filed an application with the Board seeking an interpretation that the "expansion area" could be utilized as a continuing valid nonconforming use or in the alternative, a variance pursuant to New Jersey Statute 40:55-39 (d) for expanding the trailer court use.

There were two hearings before the Board on February 2, 1970 and on May 4, 1970.

The area surrounding plaintiff's property is generally undeveloped land and is suitable for single family residences, which is a permitted use in this district.

Plaintiffs have installed water, sewerage and electrical facilities to service the aforementioned 28 spaces. Plaintiffs had not at any time designed or installed septic tanks or sanitary system to serve the "expansion area". At the hearings before the Board it also developed that no site development whatsoever had been carried out by plaintiff

nor anyone acting for plaintiff on the "expansion area". In order to use the "expansion area" for additional trailers it would be necessary for plaintiffs to grade the area and to erect and install appropriate septic systems, electric service and paved roads. At the first hearing before the Board plaintiffs also indicated that it would probably be necessary to drill another well in order to provide sufficient water for the additional trailer spaces.

At the conclusion of the February 2, 1970 hearing the Board adopted a resolution denying plaintiff's application. In denying the application the Board considered the fact that no expert testimony was offered on whether the granting of the variance could be made without substantial detriment to the public good or without impairment of the intent and purpose of the zone plan and zoning ordinance. The Board further found:

1. That the area designated as "expansion area" on the 1961 map was not being used as a trailer park site at the time of the enactment of the zoning ordinance of December 15, 1964.

2. The plaintiff's plot plan would increase the capacity of the park from 28 to 69 trailers, an increase in excess of 200% of existing capacity.

3. Extensive site development would be required to provide the necessary facilities and no comprehensive plan for sewerage or water services were presented to the Board.

4. Plaintiffs would be required to install an additional well and sanitary facilities since the existing facility was

designed solely for the original park and could not be extended to provide for the expansion.

5. No expenditures had been made by plaintiffs for the physical development of the "expansion area".

6. The property was situated in an A-Agricultural district suitable to the permitted single family residential development.

7. The proposed trailer lots projected by plaintiffs would contain approximately 3500 sq. ft. and would each accommodate a single family unit.

8. The expansion of a high density trailer park to accommodate an additional 42 to 69 trailers for a distance of some 1000′ along Oxford Avenue would adversely affect the development of surrounding properties in accordance with the zoning ordinance and zone plan.

The Board came to the conclusion that no special reasons existed for a favorable recommendation and that the variance, if granted, would substantially impair the intent and purpose of the zone plan and zoning ordinance.

Plaintiffs requested and were given a rehearing on May 4, 1970. The same evidence presented on February 2, 1970 was again presented and considered by the Board. In addition thereto, plaintiffs presented their original letter application dated February 24, 1960 seeking their trailer court license and also presented a description of the trailer court and "expansion area" prepared by Tri-County Engineers and Land Surveyors, Inc., dated March 15, 1960. Also offered in evidence was an article from a local newspaper published approximately one week after

the Township hearing in 1961 indicating that the applicant sought a license in connection with his initial installation.

At the hearing some neighbors appeared indicating they had no objections with plaintiff's application. Plaintiff, Oscar Yeager, testified he had installed 14 units during 1961 and 1962 and after the adoption of the zoning ordinance in 1964 had added some 12 units bringing the total up to 26 of the original 28.

Charles G. Ort, Jr., a real estate expert for 60 years with offices in Hackettstown, N. J. who was familiar with the Township area also testified. He described the area of the premises in question as geenrally undeveloped, and mostly wooded. He said there was a need for a trailer park facility, but he admitted that the area covered by the "expansion area" was adaptable to private residential use.

At the conclusion of the May 4, 1970 hearing the Board requested applicant to prepare a written memorandum of law which was done. The Board considered the transcript of the hearings of February 2nd and May 4, 1970 and the testimony at both hearings and the evidence presented. The Board again denied that the "expansion area" could be used as a valid conforming use and further denied the request for a use variance.

In September 1970 the Township amended its zoning ordinance to permit private camp grounds to be used for family camping activities and for recreational, educational and vacation purposes. This use is completely different from the permanent trailer park requested by plaintiff and is regulated by different neighboring legislation.

Appendix C

Plaintiffs claim three things:

1. The present mobile home park and the "expansion area" is a valid nonconforming use not affected by the 1964 zoning ordinance.

2. Special reasons exist for permitting additional mobile home sites.

3. The zoning ordinance is unconstitutional in that it totally prohibits any trailer court use within the Township.

N.J.S.A. 40:55-48 provides that:

> "Any nonconforming use or structure existing at the time of the passage of an ordinance may be continued upon the lot or in the building so occupied and any such structure may be restored or repaired in the event of partial destruction thereof."

The spirit underlying this zoning statute is to restrict rather than expand nonconforming uses. *Grundlehner* v. *Dangler*, 51 N. J. Super. 53 (App. Div. 1958); *Ranney* v. *Institute Pontificio Delle Maestre Filippini*, 40 N. J. 189 (1955).

Plaintiff relies on the dictum in the case of *Gross* v. *Allan*, 37 N. J. Super. 262 (App. Div. 1955) where the court stated at page 272:

> "The inception of a nonconforming use on a limited part of a plot does not necessarily constitute a premption of the entirety of the plot for uses of that character, as against a later prohibitory zoning ordinance. *DeVito* v. *Pearsall*, 115 N. J. L. 323,

325 (Sup. Ct. 1935); *Martin* v. *Cestone,* 33 N. J. Super. 267, 270 (App. Div. 1954). The criterion is whether the nature of the incipient nonconforming use, in the light of the character and adaptability to such use of the entire parcel, manifestly implies an appropriation of the entirety to such use prior to the adoption of the restrictive ordinance. *Cf. Lamb* v. *A. D. McKee, Inc.,* 10 N. J. Misc. 649 (Sup. Ct. 1932).

Plaintiffs claim that there has been an "appropriation" since the intention was to use the entire tract and that some action was taken—the map was submitted and monies were actually expended to have a survey taken. However, the *Gross* case cites *Lamb* v. *A. D. McKee, Inc., supra* for the criterion of "appropriation". In that case, the defendant owned a ten acre tract from which he was excavating sand and gravel. This case developed the rule in cases dealing with a "diminishing asset" which is not the case in this appeal.

In *Martin* v. *Cestone,* 33 N. J. Super. 267 (App. Div. 1954) the court there also distinguished the *Lamb* case and stated that "it is an existing *use occupying* the land, that the statute protects; the statute does not deal in mere intentions". *Martin, supra,* p. 269.

Merely declaring that plaintiffs would expand in the future if the demand warrants it, or the use of the terms "proposed trailer park" and "expansion area" do not convert such land to the status of a nonconforming use. The record shows that there was no investment in septic systems, water systems or other facilities to accommodate the expanded use.

Appendix C

As was stated in *Ardolino* v. *Florham Park Bd. of Adj.*, 24 N. J. 94 (1957):

> ". . . it is the law beyond any question that it is the use in fact existing on the land at the time of the adoption of a new zoning ordinance, and that alone, that may be continued contrary to any new regulations, R.S. 40:55-48; *Struyk* v. *Samuel Braen's Sons*, 17 N. J. Super. 1 (App. Div. 1951), affirmed o.b. 9 N. J. 294 (1952); *Martin* v. *Cestone*, 33 N. J. Super. 267 (App. Div. 1954).

The court went further in *Ardolino* and stated that vacant land could not qualify as a nonconforming use.

Therefore this court finds that plaintiffs were not entitled to construct trailer courts in the "expansion area" as a valid nonconforming use.

The plaintiffs further claim that "special reasons" exist for a variance under N.J.S.A. 40:55-39 (d). These "reasons" given by plaintiff include:

1. The circumstances of plaintiffs.

2. Public need for trailer space.

3. Plaintiffs use of their property has established the character of the neighborhood.

4. The neighbors concur in the development of the area.

5. The Township permitted plaintiffs to start therefore they are estopped now.

In *Andrews* v. *Ocean Township Board of Adjustment*, 30 N. J. 245, 249 (1959), the court stated:

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> "Two critical findings are required by the statute: (1) that the variance 'can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance'; (2) that 'special reasons' exist for the variance.

The applicant for a variance has the burden of furnishing evidence to satisfy the requirements of the statute. *Russell* v. *Board of Adjustment of Tenafly,* 31 N. J. 58 (1959); *Tomko* v. *Vissers,* 21 N. J. 226 (1956).

The action of the Board is entitled to a presumption of validity and will not be set aside unless clearly arbitrary, capricious and unreasonable. *Boove* v. *Board of Adjustment of Emerson,* 100 N. J. Super. 95 (App. Div. 1968); *Alperin* v. *Mayor and Twp. Committee of Middletown,* 91 N. J. Super. 190 (Ch. Div. 1966). In view of the presumption of validity, the judicial review of the action of a Board of Adjustment is limited in its scope. *Peoples Trust Co.* v. *Hasbrouck Heights, etc.,* 60 N. J. Super. 569, 573 (App. Div. 1959).

The affirmative statutory requirement of "special reasons" is an important element of proof of the applicant. It must be shown that the "special reasons" for which a variance is granted must fulfill one of the purposes specified in N.J.S.A. 40:55-32. *Ward* v. *Scott,* 11 N. J. 117, 125 (1952); *Grundlehner* v. *Dangler,* 29 N. J. 256, 266 (1959).

The said statute provides:

> "Such regulations shall be in accordance with a comprehensive plan and designed for one or more of the following purposes: to lessen congestion in the streets; secure safety from fire, flood, panic and

other dangers; promote health, morals or the general welfare; provide adequate light and air, prevent the overcrowding of land or buildings; avoid undue concentration of population. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view of conserving the value of property and encouraging the most appropriate use of land throughout such municipality. As amended L.1964, c. 150, § 1.

In *Andrews* v. *Ocean Township, supra,* the court stated that no definition for "special reasons" has been attempted and a precise formula is not feasible, therefore each case must turn on its own facts.

In addition to requiring that "special reasons" be found for the granting of a variance under N.J.S.A. 40:55-39 (d), there must also be a finding that the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

This fixed and far reaching restriction represents a requisite in addition to and not substitutionary for the affirmative requirement. *Skaf* v. *Zoning Bd. of Adj. of Asbury Park,* 35 N. J. Super. 215, 222 (App. Div. 1955); *Schoelppie* v. *Woodbridge Twp.,* 60 N. J. Super. 146, 150 (App. Div. 1960).

As to this second criteria the Board found, and the record seems to support its determination, that the granting of this variance would substantially impair the intent and purpose of the zone plan and zoning ordinance.

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As to the "special reason" criteria the only reason given by plaintiff that is worth mention is that of need of housing. This would not constitute a "special reason" because since the property can be used for residential purposes the need will be satisfied. This court does not believe that mobile home parks is the only answer to the housing shortage. On this subject plaintiff brings to the attention of this court and relies on a recent New Jersey Supreme Court case of *DeSimone* v. *Greater Englewood Housing Corp.* No. 1, 56 N. J. 428 (1970). In that case the court held that *public* or *semi-public* housing accommodations to provide safe, sanitary and decent housing, to relieve and replace substandard living conditions or to furnish housing for minority or underprivileged segments of the population outside of ghetto areas is a "special reason". However, in this case we do not have "public" housing; we are not dealing with any substandard living condition; nor are plaintiffs attempting to furnish housing for those segments of the population outside of a ghetto area.

In *Rexon* v. *Board of Adjustment, Haddonfield,* 10 N. J. 1 (1952) the court, dealing with a variance under N.J.S.A. 40:55-39 (c), stated that the evidence was sufficient to support a finding of the Board of Adjustment that a variance could not be granted without substantial detriment and impairing the intent of the zoning plan, if, viewed in the setting of its environment, the property may reasonably be adapted to a permitted use. In this case we have the testimony of plaintiffs own expert who admitted that the area covered by the "expansion area" was adaptable to private residential use.

Finally, plaintiffs say that the 1964 zoning ordinance as it affects their property is unconstitutional in that it totally prohibits any trailer court useage within the Township of Mansfield.

Appendix C

The Supreme Court in New Jersey in the case of *Vickers* v. *Twp. Committee of Gloucester Twp.*, 37 N. J. 232 (1962) held that a zoning ordinance precluding trailer camps and trailer parks was valid. In deciding the question of total exclusion the court stated:

> "The role of the judiciary in reviewing zoning ordinances adopted pursuant to the statutory grant of power is narrow. The court cannot pass upon the wisdom or unwisdom of an ordinance, but may act only if the presumption in favor of the validity of the ordinance is overcome by an affirmative showing that it is unreasonable or arbitrary. *Kozesnik* v. *Township of Montgomery,* 24 N. J. 154, 167, 131 A. 2d 1 (1957); See Cunningham, Control of Land Use in New Jersey, 14 Rutgers L. Rev. 37, 48 (1959). By these standards which control judicial review, the plaintiff to prevail must show beyond debate that the Township in adopting the challenged amendment transgressed the standards of R.S. 40:55-32, N.J.S.A. In other words, if the amendment presented a debatable issue we cannot nullify the Township's decision that its welfare would be advanced by the action it took."

It had been decided earlier in *Fanale* v. *Borough of Hasbrouch Heights,* 26 N. J. 320, 325 (1958) that a municipality does not have to provide for every use somewhere within its borders.

The plaintiffs make a strong argument for not following *Vickers, supra,* however, that question is not for this court but for the Legislature.

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Therefore, this court finds that the zoning ordinance of the Township of Mansfield is constitutional and this appeal is denied.

An order, consented to as to form or on notice, is to be submitted.

Yours very truly,

JOHN D. COLLINS

JDC:eeb

APPENDIX D

Constitutional Provisions Involved

The relevant provisions of the United States Constitution are as follows:

U.S.C.A. Const. Art. 6, cl. 2:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

U.S.C.A. Const. Amend. 14, sec. 1

• • •

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Appendix D

Statutes Involved

The relevant provisions of the Veterans' Housing Act of 1970, as amended, (84 Stat. 1108, 38 U.S.C.A. 1801 et seq. are as follows:

Section 1819 (a)

> "Notwithstanding any other provision of this chapter, any veteran eligible for loan guaranty benefits under this chapter who has maximum home loan guaranty entitlement available for use shall be eligible for the mobile home loan guaranty benefit under this section. Use of the mobile home loan guaranty benefit provided by this section shall preclude the use of any home loan guaranty entitlement under any other section of this chapter until the mobile home loan guaranteed under this section has been paid in full."

The relevant provisions of the Housing and Urban Development Act of 1969, as amended, (83 Stat. 379, 12 U.S. C.A. sec. 1701 et seq.) are as follows:

Section 1703 (a)

> "The Secretary is authorized and empowered upon such terms and conditions as he may prescribe, to insure banks, trust companies, personal finance companies, mortgage companies, building and loan associations, installment lending companies and other such financial institutions which the Secretary finds to be qualified by experience or facilities and approves as eligible for credit insurance, against losses which they may sustain as a result of loans and advances of credit, and purchases of obliga-

tions representing loans and advances of credit, made by them on and after July 1, 1939, and prior to October 1, 1972, for the purpose of . . . (ii) financing the purchase of a mobile home to be used by the owner as his principal residence."

Section 1703 (b)

"No insurance shall be granted under this section to any such financial institution with respect to any obligation representing any such loan, advance of credit, or purchase by it (1) if the amount of such loan, advance of credit, or purchase exceeds $5,000, except that an obligation financing the purchase of a mobile home may be in an amount not exceeding $10,000 ($15,000 in the case of a mobile home composed of two or more modules);"

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-907

OSCAR YEAGER and ANNA C. YEAGER,

Petitioners,

v.

TOWNSHIP OF MANSFIELD, WARREN COUNTY, NEW JERSEY, a municipal corporation, TOWNSHIP COMMITTEE OF MANSFIELD, and the BOARD OF ADJUSTMENT of the TOWNSHIP OF MANSFIELD,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

BRIEF IN OPPOSITION

To the Honorable Chief Justice and the Justices of the United States Supreme Court:

Pursuant to the provisions of Rule 24.1 of this Court the Respondents file this Brief in opposition to Petitioners' application for the issuance of a Writ of Certiorari to the Supreme Court of New Jersey.

ARGUMENT

I

The decision of the Supreme Court of New Jersey in this case does not establish law which in any way frustrates or interferes with the Congressional legistion cited by Petitioners and no question is presented under the Supremacy Clause, U.S.C.A. Article 6. Cl. 2, requiring review by this Court.

While failing to make specific reference to the New Jersey Zoning enabling legislation (N.J.S.A. 40:55-30 et seq.) and the ordinance of the respondent, Township of Mansfield, it is assumed that these are the two pieces of State legislation as construed by the New Jersey Court; which petitioners allege undermine and frustrate the intent of Congress as expressed thru the three passages quoted by Petitioners in Appendix D of their Petition.

In the language of Mr. Justice White expressing the majority opinion of this Court in the recent case of *Perez* v. *Campbell,* 402 U. S. 637, 91 S. Ct. 1704 (1971); deciding whether a state statute is in conflict with a federal statute and hence invalid under the Supremacy Clause is essentially a two-step process of first ascertaining the construction of the two statutes and then determining the constitutional question whether they are in conflict. Mere parallel undertakings by the federal and state legislatures working in their respective ways to achieve common goals, or legislation by one tending to complement or assist in the implementation of the other is not offensive to the constitutional requirement that the Acts of Congress made in pursuance of the constitution shall be the supreme law of the Land.

There can be no doubt in anyone's mind that the nature, design and purpose of the Veterans Housing Act of 1970, as amended by Public Law 91-506 and approved October 23, 1970 has as one of its primary objectives the encouragement and facilitation of private residential construction and rehabilitation and that as part of this program the Congress expanded the insurance provisions of the law to encourage loans to qualified veterans who desire to build, purchase, or rehabilitate residences for themselves and their families, and that mobile homes are recognized as eligible for such insurance, subject to certain conditions and restrictions spelled out in the Act and in the regulations promulgated thereunder by the Administration.

The same characterization is warranted in summarizing the intent and purpose of the Housing and Urban Development Act of 1969, as amended by Public Law 91-809, approved December 31, 1970, except that the insurance provided in this plan is available to others as well as veterans. In both statutory programs there is a requirement that the borrower use the mobile home as his principal residence. Both plans provide for insurance of the loan to acquire not only the mobile home itself but also an approved site upon which it is to be located. The amount of insurance available varies in each case dependent upon the site cost and the number of modules of which the mobile home is composed.[1]

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[1] While prohibiting commercial Mobile Home Parks, the Mansfield Township Zoning Ordinance does not prohibit the erection and use of mobile homes *per se* which in many cases are essentially portable prefabricated homes on individual lots in any residential zone, so long as such lots meet the minimum physical dimensions

(Footnote continued on following page)

Nowhere in the congressional statutory language cited by the petitioners, nor in the context of either the Veterans Housing Act, or the Housing and Urban Development Act, is there a manifestation of Congressional intent to enter into the legislative regulation of local land uses, or in any way to interfere with or supersede the local zoning regulations which traditionally have been recognized as of particular concern, and the province of, the local communities involved. This court as well as the federal and state courts has consistently refrained from interfering with the judgment of the local authorities in zoning matters except in the most extreme cases and under the most extreme circumstances. This attitude goes back at least as far as the landmark decision of this court in *Village of Euclid* v. *Ambler Realty Co.*, 272 U. S. 365, 47 S. Ct. 104.

The late Mr. Justice Black in *James* v. *Valtierra*, 402 U. S. 137, a case concerned with a contention that a California statute which conditioned the approval of public housing projects in that State upon the approval of the electorate in a referendum conducted in the community wherein it was proposed the Supremacy clause was con-

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(Footnote continued from preceding page)

prescribed in the zone, and the mobile homes meet the minimum floor area and other physical standards which the ordinance requires for conventional homes in such zone. Sec. 12 U.S.C.A. 1701 G-3 provides: "Wherever the words 'prefabricated houses' are used they shall be constructed to include houses which are of a mobile or portable character." Naturally, such mobile home dwellings are required to meet the minimum standards of the Building Code and must be provided with potable water and an approved sanitary waste disposal system as in all residential cases. This appeal concerns the ordinance provision which currently excludes Mobile Home Parks.

travened, said "By the Housing Act of 1937, the Federal Government has offered aid to state and local governments for the creation of low cost public housing. However, the federal legislation does not purport to require that local governments accept this or to outlaw local referendums on whether this aid should be accepted." The California law was sustained as constitutional.

Certainly the Congress in its varied legislative programs to aid and encourage the alleviation of housing shortages the rehabilitation of deteriorated housing facilities, and to otherwise solve housing problems across the land, has always been mindful of the benefits of zoning and it has been content not only to permit all of its housing and land development programs to function within the framework of local zoning regulations, but even chose to assist local governments in small communities to undertake the preparation of comprehensive master plans and their implementation by land subdivision controls and zoning ordinances. The very ordinance here being challenged was prepared by Mansfield Township officers with the assistance of planning consultants and other professional personnel paid with funds provided by the Federal Government. Mansfield Township, along with more than 170 New Jersey municipalities participated in this program which was administered by the Division of Regional Planning in the New Jersey Department of Conservation and Economic Development. This Federal Aid program which provided up to seventy-five percent of the cost of development of local municipal Master Plans and Zoning ordinances to provide for land development and use regulation, was administered through the Federal Housing and House Finance Administrator, the funds being allocated by the Urban Renewal Administration, pursuant to Section 701 of the National Housing Act of 1954 as amended. This congressional measure to aid and encourage local

planning and zoning was known nationally as "The 701 Local Planning Assistance Program". There was no actual participation in the professional part of the program by any Federal agency nor was any Federal review or approval required before the zoning ordinances and other local measures implementing the Master Plan were adopted and placed in local operation. Development of the whole program was left to the states and to the municipalities.

Petitioners suggest that because the Congress has provided through the insurance of mortgages an encouragement to banks and lending institutions to grant loans for the purchase of mobile homes, it has also mandated that Mobile Home Parks be permitted in every municipality of the United States without regard to local conditions or problems bearing upon the matter. They do not suggest what degree of such use would satisfy the claimed congressional mandate. Should there be one Mobile Home Park per municipality? One for each square mile? One for each 10,000 of population? How many spaces must be provided for a Mobile Home Park to qualify? How large should such spaces be? Will ten spaces do, or must there be twenty or fifty or perhaps one hundred? If only one park per municipality is required would not Petitioners' present non-conforming Park discharge Mansfield Township from its alleged obligation? Of course, Congress never intended to regulate and mandate the acceptance of this type of residential classification by any municipality, any more than it mandates the local acceptance of all of the other forms of residential, commercial, industrial, agricultural, educational, hospital, health care or other buildings and uses (to mention a few) for the construction, maintenance and/or operation of which the Congress also provides financial assistance.

Following the sanctioning of zoning by the United States Supreme Court in *Euclid*, supra (1926), New Jersey, along with many other states, began to build a sound base for its zoning program. By an amendment of the 1844 Constitution of the State of New Jersey (N. J. Const. 1844, Art. IV, Sec. VI, Par. 5) which became effective October 28, 1927, the language and authorization of which amendment was carried into the 1944 Constitution (N.J. Const. 1947, Art. IV, Sec. VI, Par. 2), the state-wide electorate approved zoning as a permitted exercise of the State's police power. The Legislature of New Jersey at first by L. 1928, C. 274, Sec. 3, and by later amendment, L. 1948, Ch. 305, Sec. 1 effective August 9, 1948 enacted enabling legislation providing:

> "Any municipality may by ordinance limit and restrict to specified districts and may regulate therein, buildings and structures according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land, and the exercise of such authority, subject to the provisions of this article, shall be deemed to be within the police power of the State. Such ordinances shall be adopted by the governing body of such municipality, as hereinafter provided, except in cities having a board of public works, and in such cities shall be adopted by such board.
>
> The authority confirmed by this article shall include the right to regulate and restrict the height, number of stories, and sizes of buildings, and other structures, the percentage of lot that may be occupied, the sizes of yards, courts, and other open spaces, the density of population and the location and use and extent of use of buildings and structures and land for trade, industry, residence or

other purposes." N.J.S.A. 40:55-30, as amended L. 1948, C. 305, p. 1221, Sec. 1 effective August 9, 1948.

"For any or all of said purposes, the governing body or board of public works may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this article, and it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings or other structures, and the nature and extent of the uses of land within such district.

All such regulations shall be uniform for each class or kind of buildings or other structures or uses of land throughout each district, but the regulations in one district may differ from those in other districts." N.J.S.A. 40:55-31, as amended L. 1948, C. 305, p. 1221, Sec. 2 effective August 9, 1948.

"Such regulations shall be in accordance with a comprehensive plan and designed for one or more of the following purposes: to lessen congestion in the streets; secure safety from fire, flood, panic and other dangers; promote health, morals, or the general welfare; provide adequate light and air; prevent the overcrowding of land or buildings; avoid undue concentration of population. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view of conserving the value of property and encouraging the most appropriate use of land throughout the municipality." N.J.S.A. 40:55-32 as amended L. 1964, C. 150 Sec. 1.

Then follow various provisions with respect to the procedure to be followed in the development of the regulations, public hearings, notice, the adoption of the ordinance, and provisions regarding the creation, composition, powers and duties of the Board of Adjustment, and various other guidelines, to assure the fair and reasonable application of the regulations and restrictions and to provide relief therefrom in specified circumstances. N.J.S.A. 40:55-33 et seq.

Thus it is seen that the fundamental purpose and intent of zoning as well as the basic guidelines for the adoption and administration of zoning regulations, are clearly stated in both the New Jersey Constitution and the above cited enabling acts. The New Jersey Courts have stated and restated the clear language of the foregoing quoted passages of the New Jersey Constitution and the Zoning Enabling Statute. Having referred to the standards therein set out, following the guidelines set forth in *Euclid,* supra, they proceed to determine whether or not the matter presented has respected the guidelines therein established. As was said by Mr. Justice Proctor speaking for the Supreme Court of New Jersey in the important case of *Vickers* v. *Township Committee of Gloucester Township,* 37 N. J. 233, appeal dismissed and certiorari denied 371 U. S. 233 (1963):

> "In N.J.S.A. 40:55-30 and N.J.S.A. 40:55-31, the legislature has given municipalities extensive power to create districts and regulate structures and the use of land therein through zoning ordinances. The guiding purpose in exercising this power is set forth in N.J.S.A. 40:55-32 [and he quotes the passage as set out *supra.*] (Bracketed language supplied)
>
> "The role of the judiciary in reviewing zoning ordinances adopted pursuant to the statutory grant

> of power is narrow. The court cannot pass upon the wisdom or unwisdom of an ordinance, but may act only if the presumption in favor of validity of the ordinance is overcome by an affirmative showing that it is unreasonable or arbitrary. *Kozesnik* v. *Township of Montgomery,* 24 NJ 154, 167 (1957). See Cunningham 'Control of Land Use in New Jersey' 14 Rutgers Law Review 37, 48 (1959). By these standards which control judicial review, the plaintiff to prevail must show beyond debate that the Township in adopting the challenged amendments (an amendment precluding Mobile Home Parks in any part of the Township) transgressed the standards of N.J.S.A. 40:55-32. In other words, if the amendment presented a debatable issue we cannot nullify the Township's decision that its welfare would be advanced by the action it took."

He goes on:

> "It cannot be said that every municipality must provide for every use within its borders. Fanale v. Borough of Hasbrouck Heights, 26 N. J. 320, 325 (1958). The fact that a municipality is largely underdeveloped does not impose a contrary obligation. Sound planning and zoning look beyond the present into what lies ahead in the hopes of the planners. It requires as much official watchfulness to anticipate and prevent suburban blight as it does to eradicate city slums." *Lionshead Lakes, Inc.* v. *Township of Wayne,* 10 N. J. 165, 173 (1952), appeal dismissed, 344 U. S. 919, 97 L. Ed. 708 (1953).

Vickers, supra, sustained an ordinance which completely precluded Mobile Homes Park from a large undeveloped

Township. The Supreme Court of New Jersey, in the instant case denied petitioners' application for certiorari to review the decision of the Appellate Division of the New Jersey Superior Court, set forth in Appendix B of Petitioners' Petition, which expressly followed *Vickers*. Other cases in which the New Jersey Court sustained municipal ordinances enacted pursuant to the above cited Zoning Enabling Act, which totally excluded certain uses were: *Duffcan Concrete Products, Inc.* v. *Borough of Cresskill*, 1 N. J. 509 (1949) (Ordinance totally excluding heavy industry); *Lionshead Lakes, Inc.* v. *Township of Wayne*, *supra* (ordinance barring anywhere in the Township any residence having less than 768 square feet of living area); *Fischer* v. *Township of Bedminster*, 11 N. J. 194 (1952) (an ordinance placing most of the Town in a residence zone with a minimum lot size of five acres for each residence); *Pierro* v. *Baxendale*, 20 N. J. 17 (1955) (an ordinance barring motels from the entire Township); *Fanale* v. *Borough of Hasbrouck Heights*, *supra* (an ordinance prohibiting apartment houses of any kind anywhere in the Borough).

In *Vickers*, *supra* (P. 246) the New Jersey Supreme Court notes that:

> "Trailer camps, because of their particular nature and relation to the public health, safety, morals and general welfare, present a municipality with a host of problems, and these problems persist wherever such camps are located. . . . In *Fanale* we said at page 325: 'Apartment houses are not inherently benign. On the contrary, they present problems of congestion and may have a deleterious impact upon other uses.' This description is equally applicable to trailer camps. Clearly trailer camps bring problems of congestion with all their difficulties."

> "And if the Township is to avoid the 'deleterious impact which one use may have upon other uses and encourage the most appropriate use of land throughout such municipality' it must be concerned with the future as well as the present values of property. Our recent decisions have uniformly held, in conformance with the constitutional provisions and the zoning statutes hereinbefore cited [N. J. Cons. Art. IV Sec. VI par. 2 and N.J.S.A. 40:55-30, 31 and 32] that 'general welfare' should be given a broad interpretation. . . . If the zoning ordinance is reasonably calculated to advance the community as a social, economic and political unit, it furthers the general welfare and therefore is a proper exercise of the zoning power. *Schmidt* v. *Board of Adjustment of the City of Newark,* 9 N. J. 405 (1952)." (Bracketed data supplied by counsel.)

In another place in the *Vickers* opinion, Justice Proctor said:

> "Since trailer camps are not permitted in the other districts, the effect of the amending ordinance prohibiting them in the industrial district is to bar them from the entire municipality. There are no trailer camps in the Township at present. Plaintiff contends that total prohibition is illegal. However, we have held that a municipality need not provide a place for every use. *Fanale* v. *Borough of Hasbrouck Heights* (26 N. J. 320, 325 (1958)). We do not think that a municipality must open its borders to a use which it reasonably believes should be excluded as repugnant to its planning scheme. It must be remembered that once a use is legally established even though conditions

> impel a revision of the zoning ordinance and the use strikes a jarring note, it cannot be eliminated by such revision under existing law. N.J.S.A. 40:55-48. If through foresight a municipality is able to anticipate the adverse effects of particular uses and if resulting actions are reasonable, it should be permitted to develop without the burdens of such uses."

It is submitted that the Mansfield Township Committee in the exercise of its legislative judgment and discretion enacted a Master Plan and Zoning ordinance which it believes will promote the health, morals and general welfare of its community and that its ordiances, as found by our New Jersey Courts, which reviewed and weighed its factual content and local conditions, is a valid exercise of the police power and constitutionally valid.

Our New Jersey Supreme Court, then, in action as late as its consideration of the instant case, has adopted the statement of purpose set out in the above-cited section of the New Jersey Constitution and the above quoted passages of the Zoning Statute (N.J.S.A. 40:55-30, 31, and 32) and has reiterated the interpretation thereof in terms of the policy stated in *Vickers, supra.* The New Jersey legislation dealing with Zoning has nothing to do with the purchase of Mobile Homes by veterans or anyone else. On the facts of this case, the New Jersey Supreme Court sustained the Mansfield Township ordinance under attack, adopted in 1964 by the Respondent Township Committee of the Township of Mansfield, in strict compliance with every procedural requirement of the New Jersey Zoning Enabling Act (N.J.S.A. 40:55-30 et seq.), as a valid and constitutional exercise of the Police Power of the State and Municipality, and in particular, sustained

the constitutionality of the total exclusion of Mobile Home Parks from the Township of Mansfield by the terms of such zoning ordinance.

Having thus ascertained the nature, intent and purpose of the respective Federal and State legislation, the Petitioners allege to be in conflict and thus violation of the supremacy Clause, we must next determine whether the provision of the Mansfield Township Zoning Ordinance excluding Mobile Home Parks as a permitted use from all parts of the Township conflicts with the provisions of the portions of the Veterans Housing Act of 1970 as amended, *supra* and the Housing and Uniform Development Act of 1969 as amended, *supra,* to such a degree that, as Chief Justice Marshall stated in *Gibbons* v. *Ogden,* 9 Wheat 1, 6 L. Ed. 23 (1824), it so *interferes with* or is *contrary to* such congressional acts, made in pursuance of the constitution; that it is invalid under the supremacy clause.

Mr. Justice Black, in *Heines* v. *Davidowitz,* 312 U. S. 52, 67, 61 Sup. Ct. 399, 404, 85 L ed 581 (1941) as quoted by Mr. Justice White in *Perez, supra* P. 1704, reviewing precedents, wrote "This Court, in considering the validity of state laws in the light of treaties or federal laws touching the same subject, had made use of the following expressions: conflicting; contrary to; occupying the field, repugnance; differences; irreconcilability, inconsistency, violation, and interference . . . in the last analysis, our function is to determine whether a challenged state statute stands as an obstacle to the accomplishment and execution of the full purposes and objectiveness of Congress.

Said Mr. Justice White in *Perez, supra,* p. 1711:

> "Since *Heines* the Court has frequently adhered to this articulation of the meaning of the supremacy

> clause. (citing numerous cases). . . . Indeed, in *Florida Lime and Avocado Growers, Inc.* v. *Paul,* 373 U. S. 132, 83 S. Ct. 1210, 10 L. Ed. 2d 248 (1963) a recent case in which the court was closely divided, all nine Justices accepted the Heines test."

As was said in an opinion by Mr. Justice Stewart in *Head* v. *New Mexico Board of Examiners in Optometry,* 374 U. S. 424, 83 S. Ct. 1759, 10 L. Ed. 2d 983 (1963), a case dealing with an alleged violation of the supremacy clause by a New Mexico statute regulating advertising by optometrists as in contravention of the Federal Communications Act and the regulations of its Commission governing radio broadcasting:

> "Statements concerning the exclusive jurisdiction of Congress beg the only controversial question: Whether Congress intended to make its jurisdiction exclusive. *California* v. *Zook,* 336 U. S. 725, 731, 93 L. Ed. 1005, 69 S. Ct. 341. *Kelly* v. *Washington,* 302 U. S. 1, 10-1382 L. Ed. 10, 12, 58 S. Ct. 87. 'In areas of the law not inherently requiring national uniformity, our decisions are clear in requiring that state statutes, otherwise valid, must be upheld unless there is found such actual conflict between the two schemes of regulation that both cannot stand in the same area, or evidence of a congressional design to preempt the field.' *Florida Lime and Avocado Growers, Inc.* v. *Paul, supra,* 373 U. S. 132, 141."

In the absence of positive evidence of clear legislative intent to the contrary, it is incredible that Congress in the legislation cited by petitioners, has ousted the State and local municipal governing bodies from an area of

such fundamentally local concern as zoning. Surely the legislative exclusion of Mobile Home Parks by the zoning of one small rural municipality in the exercise of its legislative judgment in a manner consistent with the statutory policy governing zoning in New Jersey, for local reasons, determined to be valid and constitutional by the Supreme Court of New Jersey, as within the police power of the municipality, cannot be determined as a frustration of the federal legislation cited by Petitioners.

II

The decision of the New Jersey Supreme Court sanctioning the total prohibition of Mobile Home Parks from a municipality, does not deny Petitioners any right protected by the 14th Amendment of the Constitution of the United States.

Petitioners in their petition (Page 8) complain that the decision of the New Jersey Supreme Court and the Mansfield Township Zoning Ordinance, if sustained, prohibit legitimate business use of Mobile Home Parks under the guise of zoning regulation in a residential zone. This position recognizes that the petitioners' operation of a Mobile Home Park is a business use, as distinguished from a conventional residential use in a residential zone. Petitioners contention on the merits that the denial of its request for a permit to expand its mobile home park was unreasonable and arbitrary, and that there were "special reasons" for granting the variance, were heard and considered by the Mansfield Township Board of Adjustment on two separate hearings. The appeal was denied. The same contention was presented to the Superior Court of New Jersey at a plenary trial at which the same is-

sues of fact were presented for review. Again the appeal was denied and the refusal of the Board to grant the variance was sustained. On appeal by Petitioners, the Appellate Division of the New Jersey Superior Court again reviewed the facts, received briefs and heard arguments. The appeal was denied and the validity of the zoning ordinance and the action of the Board of Adjustment in denying the requested variance was again sustained. The New Jersey Supreme Court after consideration of the facts and the law, denied certiorari. The factual questions dealing with the nature of the community, its needs, the petitioners' circumstances, and the reasonableness of the ordinance in the Mansfield Township context were all resolved against the petitioners and in favor of the respondents.

Petitioners in their statement of the case assert that a portion of their lands measuring 1,200 feet by approximately 400 feet, "was originally projected for use as a Mobile Home Park." The Board of Adjustment and the New Jersey Superior Court found as a fact that Petitioners had used a parcel only about one-third of that area as a Mobile Home Park and that they had improved that smaller area to provide 28 spaces. There was a finding that Petitioners *had not* done anything to improve or otherwise prepare the additional area into which they desired to expand the operation by creating an additional 41 trailer spaces, and that the legal non-conforming use which Petitioners had a right to continue using *did not include the additional area* or the right to develop and use the 41 additional spaces. In Superior Court Judge Collins' opinion—Appendix C, pp. 5a-18a inc. Petition. Plainly petitioners factual contention that they had a non-conforming use as to the expansion area for the 41 extra trailer spaces was adjudicated against them.

There is no non-conforming use. The issue before this court is whether the provision of the Mansfield Township Zoning Ordinance by prohibiting the conduct and operation of the business of Mobile Home Parks within its borders denies the petitioners any rights protected under the due process and equal protection clauses of Amendment XIV, Section 1, of the Constitution. U.S.C.A. Constitution Amend. 14, Section 1.

It cannot be gainsaid that the Due Process and Equal Protection Clauses of the Fourteenth Amendment of our Constitution stand as two great legal ramparts in the protection and defense of the private rights of our citizenry against the government restraints imposed to fulfill the ever increasing needs of the public. But the guaranty of the Fourteenth Amendment is freedom from *arbitrary restraint*, not immunity from reasonable regulations imposed in the interest of the community as a whole. The Constitution does not recognize absolute and uncontrolled individual liberty. The liberty safeguarded is liberty within social organization which requires the protection of law against the evils which menace the health, safety, morals and welfare of the people. Constitutional liberty is necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted and enforced in the interest of the community consistent with current requirements in the exercise of the police power is due process!

The police power of government did not have its genesis in our written Constitution. It is an inherent and indispensable element or governmental sovereignty to be empowered to order the affairs of state so as to serve the common essential needs of the people. The principle is certainly established beyond question in our American jurisprudence, that incidental restriction of limitation of

private freedoms and property rights ensuing from governmental action in a proper sphere, reasonably and uniformly invoked for the public good, is not a denial of freedom or a deprivation of property without due process of law or the taking of private property for public use without compensation.

Community planning in the implementation of which zoning is an integral and essential tool, involves systematic development to serve common interests in matters that from earliest times have been deemed to be within the range of the police power to resort to the adoption and enforcement of reasonable standards and restrictions in the development, improvement and use of land in aiding the building and expansion of community life as may reasonably be appropriate to fulfill the essential common material and moral needs as the same are manifested from time to time.

We are constantly surrounded with the problems of growth. Planless growth with its resultant haphazard development and its baneful consequences are everywhere apparent. There are current evils affecting the health, safety and welfare of our citizenry which are all but insurmountable because of the prohibitive cost of rehabilitation. The benefits brought by programs of thoughtful municipal planning are apparent in those areas where they have been instituted and consistently followed. Those communities near the metropolitan areas which, although in the direct and immediate path of the urban population explosion, still enjoy a fairly rural and relatively undeveloped character, like the respondent Mansfield Township, are exactly the municipalities wherein comprehensive planning and zoning, consistently and firmly administered and enforced at the beginning and throughout the early stages of the rapid growth which is imminent,

and which will quickly establish the pattern which the development will follow and foretell the character of the community to come, are the ones in which the public has the most to gain from the regulation of land development and use, and in which government has the greatest obligation to invoke and apply those regulations which promise the greatest likelihood of achieving the ideals and standards set for the community.

In the landmark decision of this Court in *Village of Euclid* v. *Ambler Realty Company*, 365 S. Ct. 397, 71 L. Ed. 303, 272 U. S. 274 (1926) wherein the validity of a zoning ordinance enacted in the Village of Euclid, Ohio, which denied to the respondent, Ambler Realty Company, the right to use its lands for industrial purposes prohibited in the residential zone in which the lands were included, was challenged on the ground that, because the respondent could sell its land for $10,000 per acre for industrial use but could realize only $2,500 per acre for residential use, it was being deprived of property without due process of law in derogation of the rights it contended were guaranteed under Section 1 of the Fourteenth Amendment, and further that it was denied equal protection by what it contended was the arbitrary imposition of the municipal zoning restriction on its property as distinguished from other properties in the community. The issue was whether or not municipal zoning and the incidental impact of its restrictions on the value and the range of permitted uses of land and buildings could withstand the constitutional test of due process and equal protection. Mr. Justice Sutherland, in articulating the Court's decision upholding the constitutionality of the *Euclid* Ordinance, put the question as whether or not the ordinance violated the constitutional protection to the right of property in the appellee (Ambler) by at-

tempted regulations under the guise of the police power which are unreasonable and confiscatory? (71 L. Ed. 310, 272 U. S. 386). He said:

> "Building zone laws are of modern origin. They began in this country about twenty-five years ago [i.e. about 1900]. Until recent years, urban life was comparatively simple; but with the great increase and concentration of population, problems have developed, and constantly are developing, which require and will require additional restrictions in respect to the use and occupation of private lands in urban communities. Regulations, the wisdom, necessity, and validity of which, as applied to existing conditions are so apparent that they are now uniformly sustained, a century ago, or even half a century ago would probably have been rejected as arbitrary and oppressive. Such regulations are sustained under the complex conditions of our day for reasons analogous to those which justify the traffic regulations which before the advent of automobiles and rapid transit, street railways, would have been condemned as fatally arbitrary and unreasonable. And in this there is no inconsistency, for while the meaning of constitutional guarantees never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world it is impossible that it should be otherwise. But although a degree of elasticity is thus imparted, not to the *meaning* but the application of constitutional principles, statutes and ordinances, which after giving due weight to the new conditions are found clearly not to conform to the

> constitutional, of course, must fall." (Bracketed language inserted by counsel.)

It was argued by the property owner in *Euclid* that the Euclid ordinance was invalid because it excluded not only objectionable industrial uses but all industrial uses. In dealing with this contention, Justice Sutherland said:

> "Here however the exclusion is in general terms of all industrial establishment, and it may thereby happen that not only offensive and dangerous industries will be excluded but those which are neither offensive or dangerous will share the same fate. But this is no more than happens in respect to many practice-forbidding laws which this Court has upheld, although drawn in general terms so as to exclude individual cases that may turn out to be innocuous in themselves."

In sustaining the *Euclid* ordinance, the Supreme Court firmly established the principle that the comprehensive zoning based upon reasonable exercise of the Police power to serve local conditions is constitutional, especially with respect to the due process and equal protection clauses of the Fourteenth Amendment. It determined that the main features of orthodox zoning ordinances: the division of the community into districts, and the restriction in the use of private lands within such districts and the exclusion of certain industrial, commercial, residential and other uses were within the reach of the police power.

Two years after *Euclid*, the Supreme Court, decided the case of *Nectow* v. *City of Cambridge*, 277 U. S. 183, 72 L. Ed. 842, 48 S. Ct. 447 (1928) which dealt with the application of a municipal zoning ordinance which divided Nectow's property so that one small portion thereof was

in a residential zone; and the rest in an industrial zone. Nectow could not feasibly use the one piece for a residence and claimed the ordinance was unconstitutional as to his land. The Court declined to hold that the ordinance was invalid but did say that from the evidence of the case its strict application to Nectow's property would be arbitrary and unreasonable and therefore was not enforceable as to such property.

With the basic problems of due process and equal protection thus resolved in *Euclid* and *Nectow,* municipal zoning was quickly authorized in all of the states and the State Courts, following the guidelines laid down in *Euclid* and *Nectow,* began the long case by case review of problems arising within their jurisdiction dealing with the individual zoning regulations as the same have been developed and applied in local situations. The Supreme Court has heard few zoning cases leaving the matters of local supervision to the administration of the quasi judicial agencies created by the states (in New Jersey Zoning Boards of Adjustments, under the provisions of N.J.S.A. 40:55-36-45 inclusive) and the State Courts. Hence the test of whether or not the provisions of a given zoning ordinance and its application to the local condition under review, is a valid exercise of the police power of the municipality within the framework of New Jersey's zoning enabling legislation, quoted under the first point of this brief, and thus valid under Section 1 of the Fourteenth Amendment as interpreted by *Euclid* and *Nectow,* is the day to day case by case undertaking of the State Courts. The case which the Petitioners urge the Court to review was subjected to just such a test. As Petitioners themselves insist, they raised these very questions and presented factual evidence and legal arguments to the Mansfield Township Board of Adjustment (in two sep-

arate hearings) and the New Jersey Superior Court in a full scale plenary hearing and legal argument. The Court sustained the factual findings of the Board of Adjustment, and the full transcript was reviewed by the Appellate Division of the New Jersey Superior Court which, after such review, and its consideration of the specific legal arguments urged by the Petitioners that the exclusion of Mobile Home Parks from Mansfield Township by the provisions of its zoning ordinance and particularly its application of these same zoning restrictions to the Petitioners' situation exceeded the reasonable exercise of the municipal police power, and therefore violated the due process and equal protection clauses of the Constitution again sustained the factual and legal findings of the Trial Court that the allegedly offensive restriction against Mobile Home Parks in Mansfield Township and particularly in the residential zone where Petitioners' park is located was valid as a justified exercise of the municipal police power, that on the evidence, under settled rules of law, Petitioners' legal non-conforming use was limited to their present 28 space Mobile Home Park. See pertinent language in the opinion of Judge Collins, on Page 13a of Appendix C of Petitioners' Petition.

Moreover, the Board of Adjustment and Judge Collins, as affirmed by the Appellate Division, also found as a fact that Petitioners had failed to sustain their burden of establishing any special reasons which at once would meet the test set forth in N.J.S.A. 40:55-32 *supra,* and also meet the specific condition precedent to the granting of relief to a property owner by way of variance set out in N.J.S.A. 40:55-39, providing:

> "No relief may be granted or action taken under the terms of this Section unless such relief can be granted without substantial detriment to the

> public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance."[2]

As was pointed out by Judge Collins (page 15a of Appendix C of the Petition) in sustaining the findings of fact by the Board of Adjustment:

> "In *Andrews* v. *Ocean Township* [30 N. J. 245, 249 (1959)], the [Supreme] Court [of New Jersey] stated that no definition of 'special reasons' has been attempted and a precise formula is not feasible, therefore each case must turn on its own facts. (material in brackets supplied)
>
> In addition to requiring that 'special reasons' be found for the granting of a variance under N.J.S.A. 40:55-39(d), there must also be a finding that the variance will not substantially impair the intent and purpose of the zone plan and zone ordinance.
>
> This fixed and far reaching restriction represents a requisite in addition to and not substitutionary for the affirmative requirement *Skaf* v. *Zoning Bd.*

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[2] It is interesting to note that this negative criteria is an important part of the legislative procedural requirement to prevent the granting of variances upon a mere showing of hardship of some other "special" reason alone and the consequent erosion of the very uniform regulations which have been ordained to carry out the purposes which justify the regulations as a valid exercise of the police power in the restricting of not only the land of the party seeking relief but his neighbors in the same zone which have relied upon the restrictions to protect their investment in a *permitted use!* In other words, this test is one essential part of our legislation implementing due process and equal protection clauses, part of the whole pattern designed to conform to the classic guidelines set out in *Euclid,* to see that the police power is invoked reasonably and administered uniformly.

of Adj. of Asbury Park, 35 NJ, Sup. 215, 222 (App. Div. 1955); *Schoelppie* v. *Woodbridge Twp.,* 60 NJ Super. 146, 150 (App. Div. 1960).

As to this second criteria the Board found, and the record seems to support its determination, that the granting of this variance would substantially impair the intent and purpose of the zone plan and zoning ordinance.

As to the 'special reason' criteria the only reason given by the plaintiff that is worth mention is that of need of housing. This would not constitute a 'special reason' because since the property can be used for residential purposes the need will be satisfied. The Court does not believe that Mobile Home Parks is the only answer to the housing shortage."

The Court goes on to distinguish the facts in the instant case from those in the case of *DeSimone* v. *Greater Englewood Housing Corp. No. 1,* 56 N. J. 428 (1970) which dealt with a public housing program found to be an answer in a built-up urban community to the need to provide housing for minority or underprivileged segments of its population outside its ghettos.

The trial judge, as noted above, also found the provision of the Mansfield Township ordinance excluding Mobile Home Parks from the Township as a valid exercise of the police power in Mansfield Township and held the ordinance constitutional following *Vickers* v. *Township Committee of Gloucester Township,* 37 NJ 232 (1962), App. dismissed and Cert. Den., 371 U. S. 233 (1963).

It is noteworthy that the Appellate Division of the New Jersey Superior Court in affirming the action of the respondent Board of Adjustment and the Trial Court said:

> "We have studied the record and affirm the judgment under review substantially for the reasons set forth in the opinion of Judge Collins for the Law Division. We are constrained to reach that conclusion in the light of the findings of fact by the trial court, our decisional law adverse to expansions of non-conforming uses and the policy of our State as expressed in *Vickers* v. *Twp. Com. of Gloucester Twp.*, 37 N. J. 232 (1962), appeal dismissed and Cert. Den., 371 U. S. 233 (1963) reversing the decision of this court in that case reported at 68 N. J. Sup. 263 (App. Div. 1961). For a full discussion of the problem see annotation to Mobile Home or Trailer Parks." 42 ALR 3rd 598 (1972).

It is respectfully submitted that in this case the New Jersey Zoning Legislation, the Mansfield Township Zoning Ordinance, the Action of the Mansfield Township Board of Adjustment, the judgments of the Law Division, and the Appellate Division of the New Jersey Superior Court, and the denial of a writ of certiorari by the New Jersey Superior Court, all are well within the guidelines established by this Court long ago in *Euclid, supra* and *Nectow, supra,* and that Petitioners, as the findings of fact case so clearly demonstrate, have not been denied the equal protection of our ordinance or of the enabling legislation, nor have they suffered arbitrary or unreasonable regulation violative of their rights under the due process clause of the Fourteenth Amendment.

It is the performance of our State Courts in the manner here symbolized which has enabled the local governments of our country, since *Euclid* and *Nectow,* to erect a legal institution of land use regulation which has become an integral part of our real estate property law and one of the most useful and constructive tools yet devised to encourage stability of real estate values and to encourage the most appropriate use of land throughout the nation, an institution upon which all of us has come to rely in investing in permitted uses as part of our valid property rights the denial of which are prohibited by the very same Fourteenth Amendment!

One might observe that New Jersey Courts have demonstrated continued alertness to changing conditions and deep concern for the rights of individuals as well as the right of minority and underprivileged segments of our population in all areas.

Analysis of Petitioners' Statement of Reasons for granting the requested writ (Pet. pp. 6-12 inclusive, *passim*) fails to set forth any substantial novel question of national importance or, indeed, any issue upon which this court has not spoken. On Page 7 they protest that "The direct holding of the decision under review is that Mobile Homes may be excluded from Mansfield Township. The more significant impact of the subject decision, however, taken in context with *Vickers, supra,* is that "any and all municipalities in the State of New Jersey may exclude mobile home parks from their boundaries under the guise of reasonable zoning regulation."

It is suggested that petitioners falsely assume that the only places where "Mobile Homes" may be located are

Mobile Home Parks.[3] They contend, too, that no use should be excluded from a municipality which argument would lead to the logical conclusion that every town must permit every use somewhere within its boundaries.

But more importantly, Petitioners concern that the holding in this case will inevitably result in total exclusion of Mobile Home Parks from all municipalities in New Jersey, betrays a fundamental misinterpretation of the *Euclid* doctrine, as well as the long settled policy of New Jersey's own law. They disregard the elementary premise that *each case* and *each ordinance* must be tested as to its constitutionality on the basis of the *local conditions prevailing in the municipality involved,* and the relevance of the ordinance provisions and its application to the promotion of health, morals, or the general welfare of the community; its function in the achievement of a reasonable planned land use pattern; and its conformity with N.J.S.A. 40:55-30 et seq. *supra.* Our local zoning tribunals and our state courts may be depended upon to apply the *Euclid* test as well as any other applicable standard to the circumstances which present themselves in the various communities of the state, just as they did in the case at bar. Indeed, Petitioners themselves acknowledge on Page 10 of the Petition:

> "New Jersey Courts have recognized that Zoning Ordinances containing excessive and unreasonable restrictions designed to discourage or exclude

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[3] It is a matter of common knowledge that the "Mobile Home" industry in recent years has turned to the manufacture of modular "mobile homes" which are essentially prefabricated houses, which are permitted almost anywhere on conventional lots, provided they meet the same standards applicable to so-called conventional homes. Petitioners seem to be limiting the argument to trailers, which indeed are usually confined to Mobile Home Parks.

> the development of certain types of housing accommodations can no longer be tolerated." Citing *Oakwood at Madison, Inc.* v. *Twp. of Madison,* 117 N. J. Super. 11 (Law Div. 1971), 283 A 2d 353; *Southern Bure Cty. NAACP* v. *Twp. of Mt. Laurel,* 119 N. J. Super. 164 (Law Div. 1972); 290 A 2d 465; and *J. D. Const.* v. *Bd. of Adjustment of Twp. of Freehold,* 119 N. J. Super. 140 (Law Div. 1972), 290 A 2d 46. (Decisions were based upon the facts of each of the cases the court struck down certain zoning provisions)."

It would appear that our courts are consistent in applying the classic test laid down so long ago by Mr. Justice Sutherland in *Euclid.* In some cases factual conditions have been found to support the ordinance and the court has sustained the municipality (*Vickers, supra, DeSimone, supra, Fanale, supra*), and in others, by application of the very same tests, the court has found the municipal act wanting in support e.g. *Madison Twp., supra; Mt. Laurel, supra; J. D. Const.* v. *Bd. of Adj. of Freehold, supra.* It seems Petitioners have a propensity to regard as valid exercise of the police power only those cases which on the surface appear to favor their position. Yet unlike many decisions in many other fields, each zoning case historically and by necessity must be treated on its own merits, in its own context, and in no case does it really stand as a binding precedent in the normal use of the term for any other case.

Mr. and Mrs. Yeager have resorted to the very process mandated by *Euclid* and are disappointed in the result. The case is typical of thousands of zoning cases reviewed by our courts throughout the nation every year. There is no new question presented.

In this case our New Jersey Courts have certainly met the judicial burden placed upon them by *Euclid, supra,* and *Nectow, supra,* and once again have demonstrated the wisdom of the historic policy of this Court which may be characterized as (a) a constraint to leave to the States and their local tribunals the review, supervision and regulation of zoning matters in a manner at once consistent with local circumstances and community need, and (b) a consistent restraint from interference with the judgment of local legislators and the findings of Courts in zoning matters, except in the most extreme cases and under the most extreme circumstances. It is submitted that the instant case is not such a case and that Petitioners' request for the issuance of the writ of certiorari to the New Jersey Supreme Court is unjustified.

CONCLUSION

Petitioners have failed to present any novel constitutional issue of substantial national importance. The limitation upon the use of their land results from a valid zoning restriction properly enacted by the Respondent Township Committee, pursuant to the New Jersey State Zoning enabling legislation and under a reasonable exercise of its police power with the constitutional guidelines established by this Court.

WHEREFORE, it is respectfully submitted that the Petitioners' application for a writ of certiorari to the New Jersey Supreme Court should be denied.

Respectfully submitted,

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